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Description: COMMENTS ON NOTICE OF PROPOSED RULEMAKING (NOPR),
10 CFR PART 609, RIN 1901-AB21

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Introduction: The pages that follow are Beacon Power Corporation's comments to the NOPR identified in 10 CFR Part 609 (RIN 1901-AB21). The comments are in a tabular format and include the applicable section and language in question, specific comments and/or proposed change, as well as the justification for and /or potential benefits for the requested change. Please note that not all comments are changes. There is specific language throughout that we strongly feel should be maintained "as is." These items are listed in case another party requests changes to a section where Beacon feels no changes are required.

OVERVIEW

Section/Page	Reference/Current Language	Comment/Proposed Change	Justification/Benefit
II B Page 27474 Column 3	DOE invites public comments on "Project Costs," which is currently defined "as those that are necessary, … Conversely exclude costs…, the credit subsidy cost, any administration fees…"	Provide as an option that the "credit subsidy" and "any administration fees paid subsequent to section 1702(h)" can be included in the "Project Costs."	Since these administrative fees and expenses are not quantified, it may pose a substantial burden on small businesses and development stage companies. Providing an option to incorporate these expenses will make the loan process more equitable.
II E Page 27475-6	DOE invites public comments as to all aspects concerning the assessment of fees for the Department's administration expenses.	All "fees" should be quantified in advance, as a percentage of the loan amount or a specified formula based on the loan amount. Such "fees" should, at the borrower's option, be incorporated into the loan.	Knowing the basis for determining the fee amounts and being able to have these fees added to the debt instrument would facilitate the calculation of project costs and alleviate the burden of cost uncertainties on small businesses and development stage companies.
II F Page 27476 Column 2	DOE invites public comments on the 90 percent loan guarantee limitation…	Thank you on the 90%, we believe it is highly important to the success of the program.	This will allow more small businesses and development stage companies to successfully participate in the program.
II F Page 27476 Column 2-3	DOE requests public comment on the proposal to allow up to 90 percent loan guarantee, the technology or circumstances that might warrant providing this level of guarantee, whether Eligible Lenders will perform adequate due diligence in the absence of assuming some amount of risk, …	If a technology is new and has not yet been commercially applied it will require a loan guarantee, irrespective of the technology. Lenders can be relied on to perform credit-based due diligence to a professional standard, but should be allowed to rely on DOE with respect to assessment of technical efficacy.	A 90% loan guarantee insures broader participation and will accelerate the commercialization of key technologies.

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II F Page 27476 Column 3	DOE invites public comments on the merits of adopting a minimum equity percentage requirement for projects. "DOE is proposing the Project Sponsor have a significant equity stake in the project."	Yes, an equity percentage of 10-20% is reasonable.	To demonstrate the sponsor's commitment and belief in the project a minimum percentage is appropriate.
II F Page 27476 Column 3	The Department requests comment as to whether it should establish a project size (dollar) threshold below which the Department would have authority to waive this credit rating requirement.	For projects that are determined to be of merit to the Department's objectives the credit requirement should be waived.	For small business and development stage companies with "new or significantly improved" technologies, it is difficult and financially burdensome to provide credit ratings thereby limiting these companies from participating.
§609.1 (c)(3)	"…an Applicant under the August 8, 2006 solicitation may agree to make additional provisions of this part applicable to the particular project."	Agree	Allows the applicant and the DOE to agree to provisions that are deemed beneficial to the success of the project.
§609.2 and II A Page 27474 Column 2	DOE requests comment on the two possible ways of interpreting "general use." A technology is in general use if it: [Alternative 1: Has been ordered for, installed in, …][Alternative 2: Has been in operation in a commercial project in the United States for a period of 5 years …]	Please use "Alternative 2". As stated in the NOPR, the proposed five year period should be more than adequate to "prove commercial viability", as long as the five year period begins "the date the project is commissioned" as currently defined in the NOPR.	A period of years is a better indicator than the number of projects regarding the commercial viability of a technology because the revenue stream of the proposed technology can be more accurately assessed. If the number of projects is used and implemented in a short time, revenue potential will be more difficult to assess.

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II A Page 27474 Column 2	DOE requests comment as to whether, regardless which alternative is adopted (number of projects versus number of years) in the final rule, the same definition should apply to all types of projects and technologies.	No – for the number of projects Yes – for the number of years	Again, a time-based requirement is better than a number-of-projects requirement because it should allow a better assessment of the technologies revenue performance – a key indicator of commercial viability.
§609.2 and II A Page 27474 Column 1	DOE requested comments on definition of "new or significantly improved technologies." Currently defined as: "technologies concerned with the production… productivity or value of the technology."	Add language as follows: Define as: "technologies concerned with the production… productivity or value of the technology *or an improvement over an existing technology that will perform the same function.*"	Previous definition relates to the improvement of a specific technology itself. Broadening the definition would allow any "technology" that would supplement or improve the function performed by an existing technology to submit applications.
§609.4	"Pre-Applications must meet all requirements specified in the solicitation and this part."	Replace "must" with either "*should*" or "*is expected to*" §609.5 (b) indicates if a Pre-Application fails to meet §609.4, the DOE "may" deem it non-responsive.	A "Pre-Application" should not be automatically disqualified for missing one item. See specific comments to §609.4 below. Changing "must" to "should" or "is expected to" makes §609.4 consistent with §609.5 (b).
§609.4 (e)	"An explanation of what estimated impact the loan guarantee will have on the interest rate, debt term, and overall financial structure of the project;"	Maintain as is and do not add requirement that the proposed lender provide this information in writing.	Since the final terms of the loan are not clearly defined at this stage it would be extremely difficult to receive this from a lender and the information may be qualitative at best.

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§609.4 (f)	"A copy of a commitment letter from an Eligible lender…"	Allow applicant to submit commitment letter 90-days after Pre-Application has been accepted or with the final application.	Lack of a commitment letter at the Pre-Application stage should not be prejudicial to the applicant because the Loan Guarantee Program process, itself, should be part of the process of facilitating a lender commitment. Only large companies with a strong balance sheet and credit rating can reasonably be expected to obtain a lender's firm commitment for a "new or significantly improved" technology when a loan guarantee is not already in place. Companies with this type of financial strength don't need this Program because lenders are more likely to ignore the technology risk and rely solely on the balance sheet of the applicant. Once the applicant has been invited to submit a formal application, it becomes much more likely the applicant would be able to engage multiple lending institutions in order to obtain the best rates.
§609.4 (g)	"A copy of the equity commitment letter from an Eligible Lender or other holder…?	See "§609.4 (f)" notes	See "§609.4 (f)" notes

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§609.5 (d)	"After reviewing a Pre-Application and other information acquired under paragraph (c) of this section, DOE may provide…"	Replace "may" with "*will*."	Applicant should be notified of the status of their submittal once reviewed. Will make consistent with §609.5 (b) where it states, "DOE will notify…"
§609.6 (b)(21)	"A credit assessment, for the project without a loan guarantee from a nationally recognized rating agency, where the size and estimated cost of the project justify such an assessment;"	Projects below $100 million in total cost should be exempt from a credit rating assessment requirement.	The cost of such a third party credit project rating assessment would be financially burdensome to smaller projects.
§609.7 (a)(3)	"…the project, does not have the potential to be employed in other commercial projects in the …"	Replace "commercial projects" with "*locations*."	Language clarification to show DOE's intent of promoting technologies capable of multiple projects (i.e., installations) in the United States.
§609.7 (b)(9)	In evaluating applications, DOE will consider… "Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental…"	As stated previously in comments regarding Section II F, Page 27476, Column 3: suggest DOE encourage local State participation.	Many State financial institutions offer programs where participants can receive loans, after extensive due diligence, if there is a financial, environmental or employment benefit.
§609.7 (d)	If DOE determines that a project may be suitable…DOE will notify the Applicant…and provide them with a Term Sheet."	Add language as follows: "… Term Sheet. *If the DOE does not accept the Applicant… DOE will send a notice to that effect*.	Applicants that have not been accepted will find it useful to know so they can pursue of the options. It will also reduce inquiries to the DOE.

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§609.9 (d)(1)	"… as defined in §609.2 of this part from either (but not from a combination) of the following:"	Replace "(but not from a combination)" with "*including a combination*."	No reason to restrict the funding avenue if an appropriation becomes available and DOE wishes to partially fund the Credit Subsidy Cost instead of paying.
§609.9 (f)	"Not later than 30 days prior to closing, the applicant must provide a credit rating…"	Replace "must" with "*may*."	Unknown and financially burdensome cost requirement to the applicant, especially for smaller projects.
§609.10 (d)(4)	"…no funds obtained by an Act of Congress…may be used to pay for the Credit Subsidy Costs, …"	All "fees" should, at the borrower's option, be incorporated into the loan.	Being able to have these fees added to the debt instrument would facilitate financial forecasts and reduce the financial burden on small businesses and development stage companies.
§609.10 (c) and II F Page 27476 Column 2	DOE invites public comments … and the prohibition of "stripping". NOPR states: "The guaranteed portion of a loan, or any portion of a loan, will not be separated from or "stripped" from the non-guaranteed portion of the loan."	Replace "will not" to "*may be*." Providing the ability to separate the non-guaranteed portion would allow the combination of lenders across the risk scale.	For development stage or early commercial companies this would allow conventional lenders that have criterion on risk that would preclude their participation in the non-guaranteed portion of the risk, to participate in the guaranteed portion and vice versa for lenders more tolerant of taking risk.
§609.10 (d)	"The borrower and other principals involved in the project have made or will make a significant equity investment…"	Replace "significant" with "*minimum 10%"*	Alleviate confusion as to the definition or anticipated definition of "significant" to facilitate financial planning.

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§609.10 (g)(2)	"An Eligible Lender or other Holder may assign or transfer a Guaranteed Obligation…"	Remove word "Guaranteed." Implies the loan can be "stripped".	In contradiction to §609.10 (c)
§609.11 (a)(1)	An Eligible Lender shall… "Be a "qualified institutional buyer," as defined…, including a qualified retirement plan, or governmental plan."	Delete language: "including a qualified retirement plan, or governmental plan."	Small businesses and development stage companies may need to approach financial institutions that may not have the specified plans. Imposing this requirement may limit these funding sources and thereby restrict the ability of small companies in obtaining qualified buyers and/or lenders.
§609.11 (a)(6)	Entire section	Delete entire section	The type of project financed should rely on the requirements specified in §609.11 (a)(5), not on whether or not a lender has experience with a specific technology. Could be very limiting since only "new or significantly improved technologies" are considered under this solicitation.
§609.12 (c)(7)	Project costs do not include: "Borrower paid Credit Subsidy Costs and Administration Cost…"	These fees, at the borrower's option, should be able to be incorporated into the loan.	Being able to have these fees added to the debt instrument would facilitate financial forecasts and alleviate the burden on small businesses and development stage companies.

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§609.18	"DOE may authorize deviations on an individual request basis from the requirements of this part…"	Keep as is.	The DOE needs to retain sufficient latitude and discretion in its ability to relax specific rules or guidelines when doing so would not otherwise be imprudent and is clearly in the interest of the program.

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